

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JONATHAN BEATTIE and
HEATHER BEATTIE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:12-2528

CMH HOMES, INC., d/b/a LUV HOMES #760 and
VANDERBILT MORTGAGE AND FINANCE, INC.,

Defendants,

MEMORANDUM OPINION AND ORDER AS TO POST-TRIAL MOTIONS

Following a lengthy jury trial, the jury returned a verdict partially in favor of Plaintiff Jonathan Beattie as to six violations of the West Virginia Consumer Credit and Protection Act, and partially in favor of the defendants. Subsequently, a legion of motions have been filed by the parties, adding to what has already been an unduly complex case. After considering each motion, the Court **ORDERS** as follows:

1) Plaintiff Jonathan Beattie's Motion for an Award of Statutory Penalties Pursuant to CMH Homes, Inc.'s Violations of the West Virginia Consumer Credit and Protection Act (ECF NO. 372) is **DENIED**. The jury found six specific and separate violations of the provisions of the West Virginia Consumer Credit and Protection Act found in Section 46A-6-106 of the West Virginia Code. Here, the violations claimed by Plaintiff and ultimately found by the jury all arise under Section 46A-6-102(7). The Court concludes that Section 46A-6-106(a) permits a consumer, such as Plaintiff, to recover actual damages, or two hundred dollars, whichever is

greater. The jury award is clearly greater; the statutory penalty scheme provided in Sections 46A-5-101 and 106 is thus inapplicable to these violations.

2) Plaintiff's Motion for Post-Judgment Interest (ECF No. 386) is **GRANTED**. Plaintiff Jonathan Beattie is entitled to interest at the rate provided by law on the jury's award of damages until paid.

3) Plaintiff's Motion for Equitable Relief Pursuant to CMH Homes, Inc.'s Violations of the West Virginia Consumer Credit and Protection Act (ECF No. 387) is **DENIED**. The Court finds that the violations found by the jury do not support the relief sought by Plaintiff. The Court finds that the defects in the manufactured home were not as substantial as Plaintiff claimed, that some repairs were made and others offered but refused by Plaintiff, and that Plaintiff's use of the home was not substantially impaired. Given these findings, Plaintiff is not entitled to equitable relief.

4) Defendant CMH Homes, Inc.'s Renewed Motion for Judgment as a Matter of Law Pursuant to Fed. R. Civ. P. 50(b) (ECF No. 413) is **DENIED**. The Court finds there was substantial evidence to support the jury's verdict. Plaintiff did rely on Defendant's representations that it would install the home in conformity with its contractual and legal duties. Reliance on the core elements of the purchase is sufficient. The jury had ample evidence that the violations caused damage to Plaintiff, such as inconvenience, temporary interference with use and enjoyment of the home, and other consequences. Defendant's remaining arguments were previously considered and rejected.

5) Defendant Vanderbilt Mortgage and Finance, Inc.'s Renewed Motion for Judgment as a Matter of Law Pursuant to Fed. R. Civ. P. 50(b) (ECF No. 415) is **DENIED**. First, the Court reaffirms its rejection of Defendant's arguments concerning the effect of Plaintiffs' bankruptcy

proceeding and reaffirmation of the debt. Further, the Court finds that the violations found by the jury arise from the consumer credit sale even if the underlying conduct occurred after the sale.

6) Plaintiff Jonathan Beattie's Motion for Prejudgment Interest (ECF No. 417) is **DENIED**. The West Virginia statutes cited by Plaintiff are inapplicable to the West Virginia Consumer Credit and Protection Act violations found by the jury.

7) Plaintiffs' Motion for Review of Costs Taxed by the Clerk of Court (ECF No. 408) is **DENIED**.

8) Plaintiff Jonathan Beattie's Motion for Leave to File Surreply Regarding Defendants' Motion to Set Post-Trial Briefing and Discovery Schedule (ECF NO. 400) is **GRANTED**.

9) Defendant CMH Homes, Inc.'s Motion for Leave to File Surreply to Reply to Response (ECF No. 409) is **GRANTED**.

10) Plaintiff Jonathan Beattie's Motion for Leave to File Reply Memorandum (ECF No. 420) is **GRANTED**.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: July 9, 2015



ROBERT C. CHAMBERS, CHIEF JUDGE